

## 'The king can do no wrong'

### Cobb employing immunity law to fight wreck suit

By Dennis Smith  
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As she drove home from work, a 32-year-old Marietta woman saw a police car — with blue lights flashing and siren screaming — coming her way on Nickajack Road in south Cobb.

But before she could react, the cruiser had crossed the center line and struck her vehicle head on, seriously injuring her and totaling her brand new Nissan Maxima.

The accident occurred on May 28, 1992. Today, the woman and her husband are suing Cobb County for more than \$1 million in damages, saying the accident was caused by the cruiser.

But Michele and Sam Rusin might not have a monetary claim against Cobb — whose attorneys are using the "sovereign immunity" law as a defense.

Police reports show Ms. Rusin's car was struck by a police car responding to a traffic accident. An accompanying accident investigation report shows that officer Aubrey Freeman, also named as a defendant in the suit, was at fault.

"There was nowhere to pull over ... he was on my side of the road and then it was, 'Wham!'" said Ms. Rusin, who was pregnant at the time of the crash.

However, under the sovereign immunity claim, Cobb attorneys are asking a Cobb State Court judge to absolve the county of all responsibility in the crash.

"The county is essentially saying, 'even though our employee is at fault and has hurt you, public citizen, we're not going to pay for it,'" said the attorney representing the Rusins, Marietta lawyer Matt Flournoy.

"This case shows that Cobb County government has no auto insurance on any of its vehicles," he said. "If they are successful in invoking sovereign



Staff photo by Bill Clark

Sam and Michelle Rusin look at photographs taken of their Nissan Maxima following the 1992 accident. A Cobb police cruiser crossed the

center line and hit Mrs. Rusin's car head-on, but the county is using 'sovereign immunity' to fight the couple's lawsuit seeking damages.

immunity as a defense, we will have no claim against them."

Flournoy said his client suffered a broken leg and injuries to her chest. He said her baby was born several months after the accident without major complications, but now the parents are seeing signs that the 2-year-old is not learning to talk that well.

Sovereign immunity, according to Flournoy, is a law that can be traced back to England and means "the king can do no wrong." The lawyer is hoping the

Rusins' case will do away with the county's right to claim sovereign immunity, at least in traffic accidents.

Flournoy says because the county is responsible for the actions of its employee, it should have to pay.

But county attorney Jerry Gentry paints a different picture, saying the law is a valid defense against all tort claims against the county.

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## Sovereign

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"[The sovereign immunity law] is designed to protect the purse strings of the taxpayer," Gentry said. "The county is not a deep pocket for folks to come in and just walk off with a bunch of money."

Gentry confirmed that Cobb doesn't have insurance on its vehicles, but is self-insured under a risk program which contains funds set aside to go toward disputes when the county is deemed liable. He said the fund also protects the county's employees.

Cobb had liability insurance until 1985, but the insurance company cancelled the policy, Gentry said. Gentry said county commissioners solicited bids from other insurance companies, but received none.

Sovereign immunity, according to Gentry, is a right that applies to all counties and cities in the state. Governments can still buy insurance.

The state of Georgia, under the 1991 Tort Claims Act, doesn't use the sovereign immunity claim in cases up to \$1 million.

Flournoy is scheduled to argue the case Oct. 31 in front of State Court Judge Robert McDuff.